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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,349	12/19/2001	Yasuki Kato	5.1195	1803
5514	7590	05/24/2005	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			KISHORE, GOLLAMUDI S	
			ART UNIT	PAPER NUMBER
			1615	
DATE MAILED: 05/24/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/018,349	KATO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Gollamudi S. Kishore, Ph.D	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 01 March 2005.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 16,19,20,35 and 42-44 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 16,19,20,35 and 42-44 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

## DETAILED ACTION

The amendment dated 3-1-05 is acknowledged.

Claims included in the prosecution are 16, 19-20, 35 and 42-44.

In view of the amendments, the 102 rejections of claims over Woodle 633, 556 and Allen 016 are withdrawn.

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 16, 19-20, 35 and 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0 850,646 of record by itself or Woodle 633 cited in the previous action.

EP discloses liposome formulations containing indolocarbazole (anti-cancer agent) derivatives. The liposomes are made from hydrogenated phospholipids and PEG-DSPE (note abstract, page 4, Examples and claims). Although, EP does not explicitly state that the sizes of the liposomes, in the absence of showing the criticality, it is deemed obvious to one of ordinary skill in the art to prepare liposomes of desired sizes with the

expectation of obtaining the best possible results. One of ordinary skill in the art would be motivated to prepare liposomes of instant sizes since the references of Woodle show the routine practice in the art of preparing liposomes of different sizes.

Applicant's arguments have been fully considered, but are not found to be persuasive. Applicant argues that Kato Test example 2 shows that the liposomes of phosphatidylcholine containing UCN-01 are reasonably stable in buffer over time, but that the stability of liposomes in buffer is not a good model for stability in the presence of a biological component, e.g., in blood. Applicant further argues that liposomes made from phosphatidylcholine (all examples of Kato EP 646 and the comparative Example 2 of the present invention) showed inhibited leakage in buffer solution but not inhibited leakage in rat plasma. In support, applicant points out to Test Example 1 on page 13, line 23 to page 16 line 18 of the specification. Applicant further points out to Table 1 at specification page 16, hydrogenated soybean phosphatidylcholine liposomes having an average particle sizes of 109 nm lost 59 % of UNC-01 after 3 hours and that the same liposomes having an average particle size of 186 or 130 lost only 16 and 37 % of UNC after 3 hours respectively. These arguments are not found to be persuasive since applicant's conclusions are based on a single experiment. No statistical evaluation has been done of the samples. Furthermore, the scope of the claims is not commensurate with the data in terms of claimed size range is 120 nm to 500 nm and PEG-modified lipid. In addition, as pointed out before, Examples (1 and 22) of EP shows that the preparation is passed through 0.4 micron filters (400 nm). It is logical therefore, to

assume that the liposomes of EP have sizes at least less than 400 (instant upper range is 500).

In view of the amendment the rejection of claims over Woodle in view of Mauer is withdrawn.

3. Claims 16, 19-20, 35 and 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woodle 633 or 556 or Allen (4,920,016) cited in the previous action in combination with EP cited above.

As discussed in the previous action, Woodle discloses a method of preparation of multilamellar vesicles (MLVs) containing a drug. The liposome sizes are 160 nm. The drugs include both steroidal and non-steroidal anti-inflammatory agents and anticancer agents. The liposomes are made from either hydrogenated soy phosphatidylcholine or PEG-DSPE (note the abstract, Examples, Example 4 in particular and claims).

Similarly, Woodle (556) discloses liposomes containing a drug. The liposome sizes are either 160 or 170 nm. The liposomes are made from either hydrogenated soy phosphatidylcholine or PEG-DSPE (abstract, Examples 4 and 7).

Allen (4,920,016) discloses liposomes made from DSPC and having a diameter of 170 nm. The active agents include anti-tumor agents and antibiotics (abstract, columns 10-11, Table 1 in Example 3).

What is lacking in Woodle 633, 556 or Allen 016 is the teaching of indolocarbazole derivatives as the active agent. However, it would have been obvious to one of ordinary skill in the art that any desired drug could be encapsulated within the liposomes based on the guidance provided by Woodle, especially in view of EP which

teaches the knowledge in the art of encapsulation of this compound in the liposomes.

One of ordinary skill in the art would expect similar encapsulation.

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gollamudi S Kishore, Ph.D whose telephone number is (571) 272-0598. The examiner can normally be reached on 6:30 AM- 4 PM, alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on (571) 272-0602. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gollamudi S Kishore, Ph.D.  
Primary Examiner  
Art Unit 1615

GSK